

BEFORE THE GOVERNING BOARD OF THE
DOS PALOS-ORO LOMA JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

CERTIFICATED EMPLOYEES OF THE
DOS PALOS-ORO LOMA JOINT
UNIFIED SCHOOL DISTRICT,

Respondents.

OAH No. 2011031237

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Dos Palos, California, on April 12, 2011.

Kevin R. Dale, Atkinson, Andelson, Loya, Ruud & Romo, represented the Dos Palos-Oro Loma Joint Unified School District.

Joshua F. Richtel, Tuttle & McCloskey, represented the respondents listed in Attachment A, with the exception of Todd Maddux and Robbie Calvert. Todd Maddux represented himself. Robbie Calvert did not participate in the proceedings.

The parties timely filed post-hearing briefs and the matter was submitted for decision.

FACTUAL FINDINGS

1. Dr. Brian Walker, Superintendent, Dos Palos-Oro Loma Joint Unified School District, issued the accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On March 10, 2011, the Governing Board of the Dos Palos-Oro Loma Joint Unified School District adopted Resolution No. 10-11-25 (the "PKS Resolution"), in which it determined that it was necessary to reduce or discontinue the following particular kinds of services of the District for the 2011-2012 school year (FTE refers Full-Time Equivalent position):

Elementary Classroom Instructional Services	
Multiple Subject Teaching Services - Grades K-5	8.0 FTE

Middle School Classroom Instructional Services	
English Language Arts - Grades 6-8	1.0 FTE
Reading Intervention Specialist - Grades 6-8	1.0 FTE
English Language Development - Grades 6-8	1.0 FTE
Math - Grades 6-8	2.0 FTE
Social Studies - Grades 6-8	3.0 FTE
Instrumental Music/Choir - Grades 3-8	1.0 FTE
High School Classroom Instructional Services	
English Language Arts - Grades 9-12	2.0 FTE
English Language Development - Grades 9-12	1.0 FTE
Math - Grades 9-12	2.0 FTE
Social Studies - Grades 9-12	1.0 FTE
Spanish - Grades 9-12	1.0 FTE
ROP Accounting - Grades 9-12	.33 FTE
ROP Virtual Enterprise - Grades 9-12	.17 FTE
Computer Applications - Grades 9-12	.33 FTE
ROP Auto/ROP Advanced Auto - Grades 9-12	.33 FTE
Auto Shop - Grades 9-12	.33 FTE
Digital Design - Grades 9-12	.50 FTE
ROP Digital Photography - Grades 9-12	.17 FTE
ROP Art Animation - Grades 9-12	.33 FTE
Agricultural Biology - Grades 9-12	.33 FTE
ROP Floral Design - Grades 9-12	.50 FTE
Wood Shop - Grades 9-12	.50 FTE
ROP Construction - Grades 9-12	.33 FTE
Advanced Wood Shop - Grades 9-12	.17 FTE
Counselor Positions	
Counselor - Grades 6-8	1.0 FTE
Administrative Positions	
High School Vice-Principal	1.0 FTE
Middle School Vice-Principal	1.0 FTE
Alternative Education Principal	1.0 FTE
Other Positions	
School Psychologist	1.0 FTE
Adult Education Teaching Services	1.0 FTE

Grant Writing Services	.17 FTE
Agricultural Related Services	.17 FTE
Special Education - Teachers	3.0 FTE
Alternative Education Teaching Services - Wood Shop	1.0 FTE
Total:	38.66 FTE

The board further determined that it was necessary to decrease the number of permanent and/or probationary certificated employees at the end of the present school year by a corresponding number of full-time equivalent positions, and directed the Superintendent or his designee to proceed accordingly by notifying the appropriate employees in order to implement the board's determination.

The board further adopted criteria by which ties in seniority between certificated employees would be resolved.

4. Prior to the commencement of the hearing, the parties reached various stipulations. Factual Findings 5 through 9 reflect those stipulations.

5. The District rescinded the preliminary layoff notices that were served on Lorenzo DeLeon, Manuel Cavazos, Tom Salles, and Nicole Carr.

6. The District properly applied tie-breaking criteria and the following respondents were ranked, beginning with the highest ranking winner of the tie-breaking criteria and proceeding downward, as follows: 1. Lorenzo DeLeon; 2. Manuel Cavazos; 3. Rosemary Jordan; and, 4. Delia Silva.

7. All jurisdictional requirements applicable to the certificated layoff have been met.

8. District Exhibits 1 through 11 are admitted into evidence.

9. The following certificated employees will be assigned to positions requiring use of their single subject credentials: Steven Hernandez; Janine Clements; and, Carrie Wooten.

10. At hearing, Superintendent Walker sought to discontinue an additional 3.0 FTE of services that were not listed in the PKS resolution. These services are: 2.0 FTE Community Day School (held by Marta Stencel and Denise Hill); and 1.0 FTE (Agricultural Mechanics .5 FTE, ROP Veterinary Sciences .17 FTE, Agricultural Welding .17 FTE, and Agricultural Services .16 FTE) (held by Todd Maddux). Superintendent Walker will recommend these additional discontinuances of service to the board, before May 15, 2011.

11. Respondents Marta Stencel, Denise Hill, and Todd Maddux were properly served with preliminary layoff notices.

12. The services set forth in the PKS resolution and the 3.0 FTE referenced in Factual Finding 10 are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44945. Respondents do not contend that any of these reductions is of a mandated service.

13. No permanent or probationary certificated employee with less seniority than a respondent is being retained to provide a service that a respondent is credentialed and competent to render.

14. The reduction or discontinuation of services is related to the welfare of the District and of its pupils.

LEGAL CONCLUSIONS

1. The District rescinded the preliminary layoff notices that were served on Lorenzo DeLeon, Manuel Cavazos, Tom Salles, and Nicole Carr. They are not subject to layoff.

2. The District will assign Steven Hernandez, Janine Clements, and Carrie Wooten to positions requiring use of their single subject credentials; they are therefore not subject to layoff.

3. Although the additional 3.0 FTE of services now sought to be reduced were not referenced in the District's PKS resolution, they were not required to be. A governing board may terminate the services of certificated employees pursuant to Education Code section 44955 only in very limited circumstances. One circumstance is "whenever a particular kind of service is to be reduced or discontinued . . . and when *in the opinion of the governing board* of the district it shall have become necessary by reason of [that condition] to decrease the number of permanent employees in the district." (Emphasis added.) But it is not necessary for the governing board to have any opinion about these matters in March. A governing board is not required to take any action in March. Pursuant to section 44955, subdivision (c), the board has until May 15 to decide to give notices of non-reemployment.

Although governing boards typically adopt a PKS resolution in March, they are not required to do so. Section 44949 does require certificated employees to receive a preliminary layoff notice (sometimes called the March 15 notice) and the District provided that notice to the respondents, including Marta Stencel, Denise Hill, and Todd Maddux.

4. The services set forth in the PKS resolution and the 3.0 FTE referenced in Factual Finding 10 are particular kinds of services that may be reduced or discontinued

within the meaning of Education Code section 44945. Respondents do not contend that any of these reductions is of a mandated service.

5. Due to the reduction or elimination of particular kinds of services referenced in Legal Conclusion 2, cause exists pursuant to Education Code section 44955 to give notice to respondents, including Marta Stencel, Denise Hill, and Todd Maddux, that their services will not be required for the 2011-2012 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

6. No permanent or probationary certificated employee with less seniority than a respondent is being retained to provide a service for which a respondent is credentialed and competent to render.

7. The reduction or discontinuation of services is related to the welfare of the District and of its pupils.

8. Due to the Legal Conclusions above, the issue of Robbie Calvert's eligibility to "bump" Todd Maddux is moot.

ORDER

1. The accusations against Lorenzo DeLeon, Manuel Cavazos, Tom Salles, Nicole Carr, Steven Hernandez, Janine Clements, and Carrie Wooten are dismissed. They are not subject to layoff.

2. Notice may be given to the remaining respondents, including Marta Stencel, Denise Hill, and Todd Maddux, that their services will not be required for the 2011-2012 school year.

DATED: _____

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A: LIST OF RESPONDENTS

Calvert, Robbie
Camara, Susan
Carr, Nicole
Cavazos, Manuel
Ceccarelli, Elizabeth
Coronel, Sherri
Crivelli, Holly
Davis, Meghan
DeLeon, Lorenzo
Gonzalez, Patricia
Guevara, Rene
Hill, Denise
Hofer, Jenna
Hunger, Jenny
Jordan, Rosemary
Maddux, Todd
Malm, Nicolette
Munger, Christopher
Pastori, Lynnette
Peterman, Tracy
Pinto, Robin
Salles, Tom
Silva, Delia
Soares, Kelly
Stencel, Marta
Strobel, Dan
Tall, Mike
Wallace, Robbie
Westbrook, Tina
Wilson, Kelly
Zavala, Laura
Zavala, Norma